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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

EMMANUEL WILLIAMS,

Defendant and Appellant.

A153845

(Sonoma County
Super. Ct. No. SCR674361)

Emmanuel Williams pled no contest in Sonoma County to robbery and admitted an allegation he used a firearm during the crime. The Sonoma County Superior Court sentenced him to a five-year prison term for the robbery and struck the firearm allegation. At the time, the court was aware of an unrelated case in Alameda County Superior Court in which Williams was also awaiting sentencing. About one month after imposing its five-year sentence, the Sonoma County court was informed the Alameda County court sentenced Williams to one day of probation which was then terminated. Williams contends the trial court abused its discretion when it did not recall and reconsider the five-year sentence in light of that new information. There was no abuse of discretion, so we affirm.

BACKGROUND

On December 5, 2015, Leonardo G. was walking alone on a trail in Santa Rosa. Williams approached him, pulled out a gun, pointed it at Leonardo's head, and demanded money. Leonardo gave up his wallet. Williams then demanded Leonardo's phone. Leonardo gave it to him. Williams looked at the phone and threw it in a nearby creek.

As Williams walked away from the scene, Leonardo saw him throw the wallet into the creek, too.

Leonardo decided to follow Williams to the downtown transit mall. Leonardo asked some bystanders to call the police, and Officer Ryan Cadaret arrived shortly thereafter. Officer Cadaret identified Williams and told him to put his hands on his head and get on the ground. Williams stared at the officer, asked, “What did I do?” and ran. Officer Cadaret pursued him on foot and tackled him when Williams abruptly stopped giving chase. Another responding officer found a gun on Williams with eight live rounds inside but none in the chamber.

On May 11, 2016, the Sonoma County District Attorney filed a First Amended Information charging Williams with second-degree robbery (Pen. Code, § 211), assault with a firearm (Pen. Code, § 245, subd. (a)(2)), possession of a firearm as a felon (Pen. Code, § 29800, subd. (a)(1)), misdemeanor carrying a loaded firearm in a city (Pen. Code, § 25850, subd. (a)), and misdemeanor resisting, delaying or obstructing an officer (Pen. Code, § 148, subd. (a)(1)). The information further alleged Williams personally used a firearm to commit the robbery (Pen. Code, § 12022.53, subd. (b)).

At this time, Williams also had a charge pending against him in the Alameda County Superior Court based on his possession, along with two others, of an assault rifle that was found in the closet of his house in Oakland (Pen. Code, § 30605, subd. (a)). He was awaiting sentencing on the Alameda County case following his no contest plea.

In June 2017, the Sonoma County court issued a written ruling finding Williams competent to stand trial following a four-day hearing. The court observed Williams had diagnosed anxiety and depression and a mild intellectual disability. The “serious charges between this current case and the pending matter in Alameda County . . . likely and realistically account to a substantial extent for his anxiety and depression.” The court found Williams understood the nature and purpose of the criminal proceedings against him and was able to assist his counsel in presenting his defense.

On December 8, 2017, Williams pled no contest to robbery and admitted that he personally used a firearm. The robbery carried a maximum 5-year sentence and the

enhancement carried a maximum of 10 years. The trial court agreed to consider probation but indicated that if it imposed a five-year prison term for the robbery it would strike the firearm allegation.

Prior to sentencing, Williams submitted a statement in mitigation and requested probation. He included eight letters from family and friends supporting the request. At the hearing, Williams's counsel introduced a number of Williams's family and friends, reviewed Williams's hardships, and asked the court to "give [Williams] a chance on probation."

The trial court asked if the parties knew what was happening with Williams's pending criminal matter in Alameda County. The prosecutor answered, "My understanding is [Alameda County has] been pushing that case down the road to follow this case." The court asked, "They need to see what we do?" The prosecutor replied, "Correct."

When it sentenced Williams, the Sonoma County court stated, "This is a hard circumstance because [Williams] appears now he may be in a different place than he was a couple years ago," but explained that it had "to look at the facts here." The court noted robbery with a gun was "serious, any way you look at it." The court considered the "lasting fear" and "severe emotional injury caused to the victim," who was "just out for a walk on a creek path." The court recognized Williams "has [a] limited, but quite serious, criminal history. He has the Oakland matter that we've made reference to. . . . And he's hanging around with gang members who have guns and commit dangerous acts. That is dangerous to that community." The court understood Williams's mental health issues and "limitations to his educational or intellectual functioning" but also that he had been able to maintain a job. The court also understood Williams suffered the loss of his parents at a young age but said: "[T]hat doesn't drive someone to pull a gun on someone on a walkway, on a creek path either. [Williams] has expressed some remorse, but I don't see that he has actually taken responsibility for the acts that he's engaged in. He has no explanation for why he had the gun." Based on the "overall factors," the court did not find Williams's case to be appropriate for probation. The court was also troubled by

the fact that Williams failed to obey all laws and demonstrate good conduct while his criminal case in Alameda County was pending. The court reviewed the circumstances in aggravation and mitigation and concluded most did not apply.

The trial court sentenced Williams to a five-year prison term. The court struck the firearm enhancement in light of Williams's young age, his limited criminal history, limitations on his intellectual functioning, and his law-abiding conduct during the 18 months while his case was pending.

On March 12, 2018, Williams appealed.

On April 16, 2018, Williams's counsel asked the trial court if it had "any power to impact . . . Williams's housing location." Counsel expressed concern about his client's safety in state prison and made an "unusual request" of the court to "make a recommendation or anything else." The trial court replied, "Generally speaking I don't have any power over that issue. My understanding is that he had a sentencing matter in Alameda County, what happened to that?" Counsel explained Williams "received one day of probation and then . . . probation was terminated." The court responded, "I thought our case would be the subordinate term to whatever [Alameda County] did. So it would be eight months consecutive. I'm not able to influence where he is housed. I think he should be hopefully honest and open about his concerns about his safety if he's fearful of gang issues." "Understood," responded counsel.

DISCUSSION

Penal Code section 1170, subdivision (d), allows a court 120 days to recall a commitment. "[O]nce a defendant has been committed to the Department of Corrections, the trial court has, within 120 days of the first day of commitment, the authority on its own motion to recall the sentence and resentence the defendant 'for any reason rationally related to lawful sentencing' [citation] 'provided the new sentence . . . is no greater than the initial sentence.' " (*People v. Karaman* (1992) 4 Cal.4th 335, 351.) "The court may then impose any otherwise lawful resentence suggested by the facts available at the time of resentencing." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 456.)

The burden is on an appellant attacking a criminal sentence to clearly show that the sentencing decision was irrational or arbitrary. The trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review absent a clear abuse of discretion. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978.)

Williams argues the trial court “abused its discretion in not recalling the sentence and reconsidering the state prison term it imposed.” Williams asserts that “the ultimate sentencing result” was not what the trial court anticipated when it sentenced Williams to five years in state prison. He contends the trial court believed the Alameda County case “was of considerable weight and would itself produce a prison term, thus converting the Sonoma [County] matter to a subordinate term of just a few months. When matters crystallized differently . . . it was incumbent on the court to rethink its decision.” We disagree.

The purportedly light sentence Alameda County gave Williams, as reported by his counsel, does not merit a recall, re-sentence, or a limited remand for clarification of the five-year term Williams received in Sonoma County.¹ Even if the Alameda County sentence was more lenient than the Sonoma County court anticipated, we would not conclude the court erred by refusing to reconsider its five-year sentence. The two cases were entirely unrelated. The Sonoma County court was well aware of the Alameda County case when it sentenced Williams, and the prosecutor represented to the court that Alameda County was delaying sentencing until Sonoma County issued its decision. We presume that when the Alameda County court reached its decision, it was aware of the five-year sentence imposed by Sonoma County. That court’s decision to grant Williams a single day of probation suggests it saw no need for custodial time beyond the five-year

¹ Other than counsel’s representation of the sentence Williams received in Alameda County, we found nothing else in the record substantiating that information. For purposes of this analysis, we presume the Alameda County sentence was accurately represented.

term. It does not mean the five-year term was irrational. We are not persuaded that Sonoma County had to recall or reconsider its sentence for any commensurate reduction.

Moreover, independent of the developments in Alameda County, there was nothing objectionable about the five-year sentence Williams received for robbery. An appellate court will uphold the trial court's sentencing choice if it is supported by " 'available, appropriate, relevant evidence.' " (*People v. Black* (2007) 41 Cal.4th 799, 818, fn. 7.) Such was the case here. Indeed, apart from the Alameda County developments, Williams agrees nothing with respect to the five-year sentence "suggests anything irrational in the approach taken or decision made by the trial judge." We agree.

Williams further asserts, "It is also possible that [the trial court] was unaware, or simply momentarily forgot, that [it] had the power to recall the sentence. If [it] was unaware of [its] discretion to reduce the sentence, remand is obligatory unless the record reveals a clear indication that the trial court would not have reduced the sentence even if at the time of sentencing it had the discretion to do so." There is nothing in the record that supports Williams's speculation. Absent any showing to the contrary, we presume the trial court understood the applicable law and the scope of its sentencing discretion. (See *People v. Galvez* (2011) 195 Cal.App.4th 1253, 1264.)

DISPOSITION

The judgment is affirmed.

Siggins, P.J.

WE CONCUR:

Petrou, J.

Wiseman, J.*

* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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